

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**CORRECTED  
FISCAL NOTE**

**SB 1254 - HB 1165**

March 7, 2013

**SUMMARY OF BILL:** Expands the list of “prohibited objects” that may not be brought into or possessed in a penal institution to include any object or instrument intended or reasonably likely to be used in the planning or aiding in an escape from a penal institution, any tobacco product, any tattoo paraphernalia, and any telecommunication device.

Makes possessing a telecommunication device in a penal institution a Class E felony.

**ESTIMATED FISCAL IMPACT:**

On March 4, 2013, a fiscal note was issued estimating a fiscal impact as follows:

*Increase State Expenditures – \$63,300/Incarceration\**

Upon further review, it was realized that this impact was in error. The fiscal note failed to estimate the increased incarceration costs that would result from making possession of a telecommunication device a criminal offense. The fiscal note assumed that it was already an offense under the law. Under current law, it is an offense to introduce a telecommunication device into a penal institution, but not to possess one in a penal institution. The estimated impact is:

**(CORRECTED)**

**Increase State Expenditures – \$35,200/One-Time  
\$419,800/Recurring  
\$40,504,600/Incarceration\***

**Assumptions:**

- Under current law (Tenn. Code Ann. § 39-16-201), it is unlawful to introduce or possess weapons, ammunition, explosives, intoxicants, legend drugs, or any controlled substances or controlled substance analogues in a penal institution. It is also an offense to introduce a telecommunication device into a penal institution.
- The bill would add any object or instrument intended or reasonably likely to be used in the planning or aiding in an escape from a penal institution; any tobacco product; any object or instrument capable of producing fire, including lighters and matches; and tattoo paraphernalia to the list of prohibited objects. The bill would also make it an offense to possess any telecommunication device in a penal institution.

- The bill would make introduction or possession of any object or instrument intended or reasonably likely to be used in the planning or aiding in an escape from a penal institution a Class C felony. The bill would make introduction or possession of any tobacco product a Class E felony, and possession of any telecommunication device a Class E felony.
- According to the Department of Correction (DOC), it is assumed that the bill would result in one Class C admission every other year for introduction or possession of an object or instrument intended or reasonably likely to be used in the planning or aiding in an escape from a penal institution.
- The average time served for a Class C felony is 2.98 years.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact of this legislation.
- According to the Department of Correction (DOC), the average operating cost per offender per day for calendar year 2013 is \$64.17.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every two years serving 2.98 years (1,088.45 days) for a total annualized cost of \$34,923  $[(\$64.17 \times 1,088.45 \text{ days}) / 2]$ .
- According to the DOC, the Tennessee offender management information system (TOMIS) shows an average of six incidents per year over the last three years for possession/use/introduction/selling of tobacco products-visitor. The DOC assumes that 10 percent, or 1, per year will result in an admission for Class E felony for introduction or possession of a tobacco product in a penal institution.
- The average time served for a Class E felony is 1.21 years.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving 1.21 years (441.95 days) for a total of \$28,360  $(\$64.17 \times 441.95 \text{ days})$ .
- According to the Department of Correction (DOC), there has been an average of 1,925 inmate disciplinary write-ups each year for possessing a telecommunication device over the past three years. All of these would be convicted of a Class C felony under this bill.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will account for 227  $(1,925 \times .1178)$  additional admissions for a total of 2,152  $(1,925 + 227)$ .
- According to the DOC, 33.75 percent of offenders will re-offend within one year of their release. A recidivism discount of 33.75 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law  $(2,152 \text{ offenders} \times .3375 = 726 \text{ offenders})$ .
- The average time served for a Class E felony is 1.21 years.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 1,426 offenders  $[2,152 \text{ offenders} - 726 \text{ (recidivism discount)}]$  serving an additional 1.21 years (441.95 days) for a total of \$28,360  $(\$64.17 \times 441.95 \text{ days})$ . The cost for 1,426 offenders is \$40,441,360  $(\$28,360 \times 1,426)$ .

- The total incarceration cost is \$40,504,643 (\$34,923 + \$28,360 + \$40,441,360).
- The District Attorneys General Conference (DAGC) would need additional assistant district attorneys (ADAs) to handle the number of convictions this bill would result in. It is assumed that the DAGC would require four new ADAs.
- It is assumed that the four ADAs will be hired at entry level positions with a salary of \$40,400. It is assumed that the ADAs will each require one-time expenditures for equipment in the amount of \$4,400 each.
- The bill will result in a one-time expenditure of \$17,600 (\$4,400 x 4) and increased expenditures of \$209,886 {[\$40,400 salary + (\$40,400 x .1503 benefits) + \$5,999.28 insurance] x 4}.
- The District Public Defenders Conference (DPDC) would need additional public defenders to handle the number of indictments this bill would result in. It is assumed that the DPDC would require four new public defenders.
- It is assumed that the new public defenders will be hired at entry level positions with a salary of \$40,400. It is assumed that the public defenders will each require one-time expenditures for equipment in the amount of \$4,400 each.
- The bill will result in a one-time expenditure of \$17,600 (\$4,400 x 4) and increased expenditures of \$209,886 {[\$40,400 salary + (\$40,400 x .1503 benefits) + \$5,999.28 insurance] x 4}.

*\*Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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